

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HGM, :
: :
Plaintiff, : :
: 22 Civ. 7149 (JPC) (KHP)
-v- : :
: :
SOLO INTERNATIONAL INC. *et al.*, : :
: :
Defendants. : :
: :
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JOHN P. CRONAN, United States District Judge:

The Court has reviewed the materials submitted by Plaintiff in advance of the default judgment hearing scheduled for April 18, 2024, at 9:00 a.m. *See* Dkts. 37-42. By on or before April 15, 2024, Plaintiff shall submit a letter addressing the following issues:

- First, which causes of action is Plaintiff seeking default judgment on? The Amended Complaint, Dkt. 5 (“Am. Compl.”), asserts two causes of action (*i.e.*, breach of contract and unjust enrichment), *id.* ¶¶ 20-27, but it is not clear from Plaintiff’s motion for default judgment, Dkt. 41, whether Plaintiff is seeking default judgment on both causes of action.
- Second, against which Defendants is Plaintiff seeking default judgment? Here too, it is unclear from the Amended Complaint and the motion for default judgment whether the causes of action are asserted against one, some, or all of the Defendants. For instance, the first cause of action for breach of contract repeatedly references to “the defendant” in the singular. *See* Am. Compl. ¶¶ 22 (“The plaintiff and the defendant Comfy Cozy LLC entered into a contractual agreement The Defendant received the manufactured clothes from the Plaintiff and refused to pay the rightful contractual remaining payment”), 23 (“Accordingly, the defendant materially breached the contract by intentionally denying the

plaintiff's demands for its remaining payment.”). Yet the first cause of action then proceeds to refer to “the defendants” in the plural, alleging that “[t]he Plaintiffs [sic] suffered a substantial loss as a result of the defendants’ breach of contract.” *Id.* ¶ 24. Similarly, the Amended Complaint appears to only allege unjust enrichment against Defendant Solo International. *See id.* ¶ 27.

- Third, what is the legal basis for awarding attorneys’ fees and costs in this action? The motion for default judgment does not provide any legal basis for awarding attorneys’ fees and costs, neither pointing to a statute nor a contractual obligation. And even were there a legal basis, Plaintiff does not provide any billing records to support the award it seeks.

Plaintiff is further directed to serve on Defendants, via overnight courier, a copy of the letter submitted to the Court in response to these questions and file proof of such service by on or before April 16, 2024.

In addition, Defendants’ Answer to the Complaint asserted a counterclaim against Plaintiff for breach of contract. *See* Dkt. 17 at 3-6. In light of Defendants’ failure to appear in this action following the withdrawal of their counsel, *see* Dkt. 36 at 1, the Court provides notice of its intent at the hearing on April 18, 2024 to dismiss Defendants’ pending counterclaim for failure to prosecute under Federal Rule of Civil Procedure 41(b) unless Defendants either: (1) submit a filing to the Court requesting that the counterclaim not be dismissed or (2) appear at the hearing to present argument as to why the counterclaim should not be dismissed.

Finally, Plaintiff shall serve on Defendants, again via overnight courier, a copy of this Order and file proof of such service by on or before April 12, 2024.

SO ORDERED.

Dated: April 11, 2024
New York, New York



JOHN P. CRONAN
United States District Judge